

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AMEL DALLUGE,

Plaintiff,

V.

FEDERAL BUREAU OF INVESTIGATION
(ALL ACTORS), and DEPARTMENT OF
CORRECTIONS (ALL ACTORS),

Defendants.

No. C11-5132 RJB/KLS

ORDER TO AMEND OR SHOW CAUSE

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff Amel Dalluge is presently confined at the Clallam Bay Corrections Center. Under separate order, the court has granted Plaintiff's application to proceed *in forma pauperis*.

Presently before the court for review is Plaintiff's proposed civil rights complaint in which he purports to sue the "Federal Bureau of Investigations (All Actors) and the Department of Corrections (All Actors)." ECF No. 6. Plaintiff complains that the FBI is failing to investigate his claim that the Department of Corrections (DOC) is torturing him. He alleges that the DOC has placed him in a red cell with black micro dots everywhere and that he is being subjected to high pitched frequencies through the intercom, light oscillations, food that causes digestive problems, sexual deviant therapy, brainwashing, and soul transfer. *Id.*, p. 3. He claims that these actions violate his Eighth Amendment rights, the RICO Act, and "lots of international

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1 laws.” Plaintiff seeks an international investigation, complete monetary liquidation or forfeiture,
2 and any other form of relief, including criminal charges. *Id.*

3 DISCUSSION

4 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
5 complaints brought by prisoners seeking relief against a governmental entity or officer or
6 employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint
7 or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that
8 fail to state a claim upon which relief may be granted, or that seek monetary relief from a
9 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
10 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

12 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
13 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
14 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
15 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
16 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
17 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
18 to relief above the speculative level, on the assumption that all the allegations in the complaint
19 are true.” See *Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
20 In other words, failure to present enough facts to state a claim for relief that is plausible on the
21 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

22 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
23 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
24 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
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1 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
2 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that
3 amendment would be futile, however, a pro se litigant must be given the opportunity to amend
4 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

5 Plaintiff's complaint is frivolous and dismissal of the complaint under Fed. R. Civ. P.
6 12(b)(6) is proper for the reasons set forth below. However, the court is issuing this order to
7 show cause in order to give Plaintiff an opportunity to file a response or amend his complaint. In
8 that regard, Plaintiff is provided the following guidance.

9 To state a claim under 42 U.S.C. § 1983, a complaint must allege that the conduct com-
10 plained of was committed by a person acting under color of state law and that the conduct
11 deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the
12 United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds*, *Daniels*
13 *v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged
14 wrong only if both of these elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th
15 Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

16 There must be an actual connection or link between the actions of the defendants and the
17 deprivation alleged to have been suffered by plaintiff. *See Monell v. Department of Social*
18 *Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Rizzo v. Goode*, 423 U.S. 362, 96
19 S.Ct. 598, 46 L.Ed.2d 561 (1976). "A person 'subjects' another to the deprivation of a
20 constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in
21 another's affirmative acts or omits to perform an act which he is legally required to do that
22 causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
23 Cir.1978).

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1 Plaintiff has failed to identify any person as a defendant. Thus, he has failed to state a
2 claim under 42 U.S.C. § 1983. Plaintiff must allege in specific terms how each **named**
3 individual defendant was involved in the deprivation of his constitutional rights. There can be no
4 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
5 defendant's actions and the claimed deprivation. *See Rizzo v. Goode*, 423 U.S. 362, 96 S.Ct.
6 598, 46 L.Ed.2d 561 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir.1980); *Johnson v.*
7 *Duffy*, 588 F.2d 740, 743 (9th Cir.1978). Vague and conclusory allegations of official
8 participation in civil rights violations will not suffice. *See Ivey v. Board of Regents*, 673 F.2d
9 266, 268 (9th Cir.1982). Plaintiff must set forth factual allegations and allege with specificity
10 the names of the persons who caused or personally participated in causing the alleged
11 deprivation of his constitutional rights.

12 Plaintiff has failed to state a cause of action under § 1983. He has failed to allege facts
13 demonstrating how the failure of anyone to investigate or prosecute the Department of
14 Corrections has resulted in a deprivation of his federal constitutional rights or how he has been
15 harmed. If Plaintiff has a valid claim for violation of a federal constitutional right, he may file an
16 amended complaint, setting forth all of his factual claims, causes of action, claims for relief, and
17 any exhibits. Plaintiff shall set forth his factual allegations in separately numbered paragraphs
18 and shall allege with specificity the following:

21 (1) the names of the persons who caused or personally participated in causing the
22 alleged deprivation of his constitutional rights;

24 (2) the dates on which the conduct of each Defendant allegedly took place; and
25 (3) the specific conduct or action Plaintiff alleges is unconstitutional.

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1 An amended complaint operates as a complete substitute for (rather than a mere
2 supplement to) the present complaint. In other words, an amended complaint supersedes the
3 original in its entirety, making the original as if it never existed. Therefore, reference to a prior
4 pleading or another document is unacceptable – once Plaintiff files an amended complaint, the
5 original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*,
6 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior
7 complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the
8 involvement of each defendant must be sufficiently alleged.

9
10 Plaintiff shall present his complaint on the form provided by the court. The amended
11 complaint must be legibly rewritten or retyped in its entirety, it should be an original and not a
12 copy, it may not incorporate any part of the original complaint by reference, and it must be
13 clearly labeled “Amended Complaint” and must contain the same cause number as this case.
14 Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation
15 pages as needed but may not attach a separate document that purports to be his amended
16 complaint. In order to make a short and plain statement of claims against the defendants,
17 plaintiff should include factual allegations that explain how each named defendant was involved
18 in the denial of his rights. The court will screen the amended complaint to determine whether it
19 contains factual allegations linking each defendant to the alleged violations of plaintiff’s
20 constitutional rights. The court will not authorize service of the amended complaint on any
21 defendant who is not specifically linked to the violation of plaintiff’s rights.
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23
24 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned
25 that if the amended complaint is not timely filed or if he fails to adequately address the issues
26 raised herein on or before **April 15, 2011**, the Court will recommend dismissal of this action as

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frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a “strike” under 28 U.S.C. § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are dismissed on grounds they are legally frivolous, malicious, or fail to state a claim, will be precluded from bringing any other civil action or appeal in forma pauperis “unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. 1983 civil rights complaint and for service. The Clerk is further directed to send a copy of this Order and a copy of the General Order to Plaintiff.

DATED this 16th day of March, 2011.

Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge